



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 29, 1994

Mr. Jimmy Alan Hall
Jonestown City Attorney
c/o Scanlan & Buckle, P.C.
602 West 11th Street
Austin, Texas 78701-2099

OR94-427

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24789.

The City of Jonestown (the "city"), which you represent, received an open records request for "the name of the person or persons who registered a complaint, that my rent house . . . is unsafe for occupancy." You explain that the person or persons complaining about the rent house (the "complainant") did not "complete, sign, or file a written complaint," but rather made an oral statement that the city tape recorded. Consequently, the requested information, *i.e.*, the complainant's identity, does not exist in written form on any city document.¹

You first contend that because the complainant's name does not exist in any of the types of documents listed under section 552.022 of the Government Code, the requested information is not subject to the Open Records Act. Section 552.021(a) of the Government Code provides:

Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

(1) by a governmental body; or

¹You state, however, that the city has released to the requestor a copy of the "inspection report" that a city employee completed during the investigation of the complaint.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

You have submitted to this office for review a copy of the tape-recorded statement, which contains the complainant's name. Clearly, this statement constitutes "information . . . collected, assembled, or maintained . . . by a governmental body." See also Open Records Decision No. 461 (1987) at 3 (tape recording constitutes "developed material" and therefore is "public record" for purposes of Open Records Act). Consequently, this office must determine whether the requested information comes within one of the act's exceptions to required public disclosure.²

You contend that the city may withhold the tape-recorded statement pursuant to the "informer's privilege," as incorporated into section 552.101 of the Government Code. In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the privilege ordinarily applies to the efforts of law enforcement agencies, it may apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); see also Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. See Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3.

You contend that the informer's privilege protects the tape recording because it consists of the complainant's report of an alleged violation of a city ordinance carrying a criminal penalty. After reviewing the tape-recorded statement and the applicable city ordinance, we agree that the informer's privilege applies in this instance. See Open Records Decision No. 279 at 2 (concluding that informer's privilege applies to identity of person who reports zoning violation, which is class C misdemeanor). Further, because

²We note that section 552.022 of the Government Code merely provides a nonexhaustive list of the types of government-held records that are subject to the Open Records Act.

the informer's privilege protects all information tending to identify the informant, *Roviaro v. United States*, 353 U.S. at 60, the city may withhold the tape recording in its entirety because the voice on the tape recording alone might tend to reveal the informant's identity.³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 24789

Enclosure: Tape recording

cc: Mr. Edward M. Holden
11514 Main Street
Jonestown, Texas 78645
(w/o enclosure)

³Because we resolve your request under section 552.101, we need not address your other arguments at this time.